

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #12	CCRB Case #: 201809415	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/03/2018 11:05 PM	Location of Incident: 12th Street between 34th Avenue and 35th Avenue	Precinct: 114	18 Mo. SOL 5/3/2020	EO SOL 12/18/2020	
Date/Time CV Reported Mon, 11/05/2018 11:40 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/12/2018 11:00 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Torres	13539	946335	PSA 9
2. POM Christophe Singh	01593	961288	PSA 9
3. An officer			PSA 9
4. POM Michael Alpers	18406	958234	PSA 9

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gilmer Garcia	03087	950468	PSA 9
2. POM Brian Magas	03523	953036	PSA 9

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer searched the vehicle in which § 87(2)(b) was an occupant.	
B. An officer	Abuse: An officer interfered with § 87(2)(b)'s use of a recording device.	
C.POM Juan Torres	Abuse: Police Officer Juan Torres searched § 87(2)(b)	
D.POM Juan Torres	Abuse: Police Officer Juan Torres frisked § 87(2)(b)	
E.POM Juan Torres	Abuse: Police Officer Juan Torres searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM Michael Alpers	Abuse: Police Officer Michael Alpers searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On November 5, 2018, § 87(2)(b) filed this complaint over the phone with IAB. The case was referred to the CCRB on November 12, 2018 under log #18-43913.

On November 5, 2018 at approximately 11:05PM, § 87(2)(b) was driving alone on 12th Street between 34th Avenue and 35th Avenue in Queens, when Police Officer Gilmer Garcia and Police Officer Brian Magas, of PSA 9, stopped him for failing to yield to pedestrians. Police Officers Juan Torres, Christopher Singh, and Michael Alpers, also assigned to PSA 9, responded to the scene. An officer reached into § 87(2)(b) vehicle and turned off his phone, which § 87(2)(b) was using to record this incident (**Allegations A and B- Abuse of Authority: § 87(2)(g)**). PO Torres searched and frisked § 87(2)(b) (**Allegations C and D-Abuse of Authority: § 87(2)(g)**). PO Torres and PO Alpers searched § 87(2)(b) vehicle (**Allegations E-Abuse of Authority: § 87(2)(g)**, **Allegation F- Abuse of Authority: § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) was issued a summons for § 87(2)(b) (Board Review 01).

§ 87(2)(b) provided the CCRB with a video that he took on his cell phone that captures the beginning of this incident (Board Review 02, video summary located at Board Review 03).

Officers from PSA 9 were not equipped with body-worn cameras at the time of this incident.

Findings and Recommendations

Allegation A-Abuse of Authority: An officer searched the vehicle in which § 87(2)(b) was an occupant.

Allegation B- Abuse of Authority: An officer interfered with § 87(2)(b)'s use of a recording device.

In his verified statement to the CCRB, § 87(2)(b) stated that he believed PO Magas and PO Garcia were following him on the night of the incident because he noticed their vehicle at two different points (Board Review 04). When making a right turn on 12th Street onto 35th Avenue, § 87(2)(b) was focused on looking at the officers, and slammed on his brakes in order to avoid hitting pedestrians. PO Garcia and PO Magas then pulled § 87(2)(b) over. § 87(2)(b) turned his phone on and recorded the interaction. After providing his license and registration, another unmarked vehicle pulled up to the scene. PO Torres approached the passenger's side door while PO Garcia approached the driver's side door. PO Torres then made a remark that § 87(2)(b) car smelled like weed. No other officer ever remarked that his car smelled like weed. § 87(2)(b) did not smoke marijuana prior to entering his car, did not smoke marijuana while inside his car, and had no marijuana on his person or in the car. § 87(2)(b) told PO Torres that he did not smoke marijuana. PO Torres then walked around the back of § 87(2)(b) car, came to his driver's side window, and asked him to step outside of the car. § 87(2)(b) moved to get outside of the car but PO Torres told him he could record but he could not bring his phone with him. § 87(2)(b) then placed his phone on an ash tray in the center console so he could continue to record. § 87(2)(b) then got outside of the vehicle. An officer then opened the passenger side door and turned off the recording in § 87(2)(b) cell phone. § 87(2)(b) did not actually see this happen because he was getting out of the car but he gathered that this must have happened after watching the video of the incident. The recording can be shut off by pressing a power button at the side of the screen or by pressing a red button on the phone's screen.

It is undisputed that PO Torres frisked and searched § 87(2)(b) § 87(2)(g)

§ 87(2)(b) stated that when he got out of the car, PO Torres immediately put his hands in § 87(2)(b) hoodie pockets. § 87(2)(b) had a second phone in his pocket. PO Torres did not remove the phone. PO Torres then put his hands in § 87(2)(b) sweatpants pockets. The only thing § 87(2)(b) had in his pocket at the time were dollar bills; § 87(2)(b) had nothing hard on his person and nothing was creating a bulge in his pockets. PO Torres then patted § 87(2)(b) down to his ankles. PO Magas was standing by PO Torres. PO Singh was sitting in PO Garcia's vehicle and PO Garcia was standing toward the back of § 87(2)(b) car.

PO Torres stated that prior to approaching § 87(2)(b) vehicle, PO Garcia informed him that the car smelled like marijuana. PO Torres stated that when he approached § 87(2)(b) vehicle, he smelled the odor of fresh marijuana emanating from the vehicle. PO Torres described the odor as similar to if someone was freshly smoking marijuana inside the vehicle. Once § 87(2)(b) exited the vehicle, PO Torres conducted a frisk and search of § 87(2)(b) in order to uncover any narcotics due to the smell of marijuana emanating from the vehicle. PO Torres frisked § 87(2)(b) waist and searched § 87(2)(b) jacket and pants pockets. PO Torres did not uncover anything during this search. PO Torres also acknowledged searching § 87(2)(b) vehicle (see Allegation E) and stated that no marijuana was recovered during this search.

PO Garcia stated that he never smelled marijuana during this car stop and never heard any discussion about marijuana.

PO Magas did not remember smelling marijuana during the car stop and stated that if he did smell marijuana during the course of a car stop, he would document this in his memo book. PO Magas stated that he might not have noted it if there was no action (like a summons or a car search) taken specifically in regards to the marijuana.

PO Alpers and PO Singh had no recollection of this car stop and did not recall smelling any marijuana during a car stop on the night of the incident.

Only PO Garcia and PO Magas prepared memo book entries in regards to this incident. PO Garcia's memo book entry noted that § 87(2)(b) failed to yield to the pedestrians crossing the crosswalk and that he obstructed pedestrian traffic by standing in the middle of said crosswalk, causing pedestrians to walk around the car. § 87(2)(b) stated, "I was watching you" when officers approached his vehicle (Board Review 10). PO Magas' memo book noted that there was a car stop in front of 34-35 12th Street for the obstruction of pedestrian traffic and that a summons was issued (Board Review 11). Neither of their entries mentioned a smell of marijuana.

While PO Torres was consistent in both the contemporaneous statements he made during the incident and in his CCRB interview that he smelled marijuana during this car stop, the investigation is not crediting his observation due to the following: PO Garcia, who is seen on video standing at § 87(2)(b) fully open window for approximately two and a half minutes before PO Torres arrived at the location, denied smelling marijuana at any point. § 87(2)(g)

PO Magas, who acknowledged standing at the front passenger's side window, did not recall smelling marijuana during this incident. § 87(2)(g)

§ 87(2)(g)

The scent of marijuana emanating from a defendant's vehicle provides officers with probable cause to search the vehicle and its occupants. People v. Chestnut, 43 A.D.2d 260 (Board Review 12).

§ 87(2)(g)

Allegation E-Abuse of Authority: Police Officer Juan Torres searched the vehicle in which

§ 87(2)(b) was an occupant.

Allegation F-Abuse of Authority: Police Officer Michael Alpers searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that after PO Torres searched and frisked him, PO Alpers came "out of nowhere" and went into the open driver's side door. PO Alpers looked on the floor and then looked inside a compartment that separates the driver's side and the passenger's side. PO Alpers then went over to the passenger's side and looked on the seat and beneath the seat. PO Alpers opened the glove compartment and looked around. After not finding anything, PO Alpers then went to the back passenger's seat, opened the door and looked around the backseat. PO Alpers pulled down the backseats and the divider, and looked inside the trunk of the car. PO Alpers did not recover anything during this search. PO Torres was watching PO Alpers for the whole duration of the car search, which made him believe that PO Torres was supervising PO Alpers.

PO Alpers did not have any independent recollection of this incident and denied searching § 87(2)(b) car.

PO Torres stated that after he frisked and searched § 87(2)(b) he instructed him to stay by the back of the car with other officers. PO Torres did not recall which officers § 87(2)(b) was standing with. PO Torres then proceeded to search § 87(2)(b) vehicle for narcotics. Another officer assisted PO Torres in the car search but PO Torres could not recall who. PO Torres searched the driver's side of the car; he looked through the "lungable areas", which included under the seat, the center console, the rear driver's side, and the front passenger's seat. PO Torres did not uncover any marijuana during this search. PO Torres searched the vehicle for approximately one to two minutes.

PO Garcia stated that after he left PO Torres at § 87(2)(b) vehicle, he went to sit inside his vehicle and PO Singh assisted him in preparing the summons for § 87(2)(b). After approximately ten to fifteen minutes, he approached § 87(2)(b) who was standing by the rear of his car with PO Torres, and issued him the summons. PO Garcia never searched § 87(2)(b) vehicle and never observed any search of the vehicle.

PO Magas and PO Singh both denied participating in a search of § 87(2)(b) vehicle and denied seeing any officer search the vehicle.

The scent of marijuana emanating from a defendant's vehicle provides officers with probable cause to search the vehicle and its occupants. People v. Chestnut, 43 A.D.2d 260 (Board Review 12).

§ 87(2)(g)

§ 87(2)(b) alleged that PO Alpers conducted the search of his vehicle while PO Torres watched. PO Torres stated that he searched § 87(2)(b) vehicle and that another officer, who he could not recall, assisted him in doing so. PO Alpers did not recall this incident and denied searching § 87(2)(b) vehicle. § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one other CCRB complaint and has been named as a victim in four allegations.
 - § 87(2)(b)
- Police Officer Juan Torres has been a member of service for 11 years and has been a subject in nine CCRB complaints with fifteen allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Michael Alpers has been a member of service for three years and has been a subject in one closed CCRB complaint and two allegations, both of which were substantiated.
 - 201809823 involved substantiated allegations of a discourtesy (word) and a refusal to provide name against PO Alpers; the Board recommended Command Level Instructions and the NYPD has not made a decision about the imposition of discipline.

- § 87(2)(g) [REDACTED]
[REDACTED]

Mediation, Criminal, and Civil Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of June 14, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim filed in regards to this incident (Board Review 17).
- § 87(2)(b) § 87(2)(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date